S/2 **S.B. CIVIL SECOND APPEAL NO.182/2007.**
Bajrang Lal Vs. Smt. Keshar Devi
...

S/3 **S.B. CIVIL SECOND APPEAL NO.260/2007.**
Smt. Keshar Devi Vs. Bajrang Lal
...

Date of Order :: 9th August 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manish Shishodia, for the appellant in CSA No.182/2007
(respondent in CSA No.260/2007).
Mr. B.M. Bhojak, for the appellant in CSA No.260/2007.
(respondent in CSA No.182/2007).

BY THE COURT:

For the submissions made by the learned counsel for the parties, more or less in consensus, both these appeals are taken up for disposal by this common order.

In Civil Second Appeal No.182/2007 (Bajrang Lal Vs. Smt. Keshar Devi), the defendant-appellant seeks to assail the judgment and decree dated 31.03.2006 passed by the Additional District Judge, Churu in Civil Appeal (Decree) No.4/2005 whereby the learned appellate court has affirmed the decree for eviction passed by the Civil Judge (Junior Division), Sardarshahar on 27.01.2005 in Civil Suit No.8/1995. The appellate court has, however, modified the decree of the trial court insofar it relates to arrears of rent and mesne profits by reducing the rate from Rs.500/- per month as fixed by the trial court to Rs.400/- per month; and this part of the decree passed

by the appellate court, of reducing the rate at which mesne profits and arrears of rent are to be paid, is sought to be questioned by the plaintiff-landlord in Civil Second Appeal No.260/2007 (Smt. Keshar Devi Vs. Bajrang Lal).

After attempting to argue for some time, learned counsel Mr. Manish Shishodia appearing for the appellant-tenant in Civil Second Appeal No.182/2007, in all fairness conceded that the appellant cannot press upon his grounds for formulating any substantial question of law in this second appeal but further submitted that the appellant had been carrying on business in the suit premises for last 30 years and shall require reasonable time to make alternative arrangement before shifting his business and, therefore, he may be granted time upto the month of December 2008 for vacating the suit premises.

Learned counsel Mr. B.M. Bhojak appearing for the plaintiff-landlord, in equal fairness submitted that though the plaintiff would not resist granting of some reasonable time to the tenant to vacate the suit premises but then, the learned appellate court has been in error in reducing the rate of rent to Rs.400/- per month, even below the agreed rate, and in depriving the plaintiff of interest on the due amount.

To these submissions of Mr. Bhojak, learned counsel Mr. Shishodia responded with the submissions that the appellant is agreeable to make payment of rent at the rate of Rs.500/- per

month and in that regard the directions as contained in decree passed by the appellate court for payment of rent @ Rs.400/- per month might be treated as modified for payment of rent @ Rs.500/- per month.

On such proposition, learned counsel Mr. Bhojak submitted that upon the appellant making payment of rent at Rs.500/- per month and clearing all the arrears of rent and then, on his continuing to make payment of rent month by month without default, and upon submission of usual undertaking, time to vacate the premises may be allowed upto or around the months of October-November 2008. Learned counsel Mr. Bhojak further submitted that when the rent is agreed to be paid at Rs.500/- per month, he would not insist upon other ground and does not press upon his appeal (CSA No.260/2007).

In view of the aforesaid submissions made by the learned counsel for the parties culminating into consensus, while Civil Second Appeal No.182/2007 is dismissed as no substantial question of law is involved in this case and Civil Second Appeal No.260/2007 is dismissed as not pressed; and while the decree for eviction passed by the two courts below is affirmed, the appellant is granted extended time to vacate the suit premises with the terms and conditions, that would be of modification of the impugned decree with the consent of the parties, in relation to the time for vacating the premises and in relation to the

amount payable towards arrears of rent and mesne profits, thus:

(i) The defendant-appellant-tenant shall personally submit an undertaking supported by affidavit before the trial court within three weeks from today to the effect that on or before **30th November 2008,** he shall hand over peaceful and vacant possession of the suit premises to the plaintiff. He shall also undertake not to cause any damage to the suit premises nor to make any alteration and not to assign, sublet or in any manner part with possession to any other person of the suit premises and not to put the premises to any use other than the present use and not to cause any nuisance.

(ii) The defendant-appellant-tenant shall deposit within three weeks the arrears, if any, of the rent payable at the rate of Rs.500/- per month and shall further pay to the landlord the amount for use and occupation of the suit premises at the rate of Rs. 500/- per month or deposit this amount in the bank account of the landlord (particulars whereof have admittedly been supplied to the appellant-tenant) month by month on or before 15th day of the next month.

It is made clear that upon failure on the part of the defendant-appellant to comply with any of the conditions aforesaid or violating any terms of undertaking, the plaintiff shall be entitled to execute the decree forthwith in accordance with law.

Mohan/ **(DINESH MAHESHWARI), J.**

S/3

S.B. CIVIL SECOND APPEAL NO.260/2007.
Smt. Keshar Devi Vs. Bajrang Lal
...

Date of Order :: 9th August 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.M. Bhojak, for the appellant.
Mr. Manish Shoshodia, for the respondent.
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This appeal has been placed on board today in view of the submissions made by learned counsel for the parties yesterday in Civil Second Appeal No.182/2007.

The appeal is dismissed as not pressed (as per common order in S.B. Civil Second Appeal No.182/2007 : Bajrang Lal Vs. Smt. Keshar Devi).

In this appeal the record was earlier ordered to be requisitioned. However, with disposal of appeal, the record being now not required, the courts concerned may be informed accordingly, and if received, the record may be sent back.

(DINESH MAHESHWARI), J.

Mohan/